

#10

Rec. No 8884-B

LAW OFFICES

ALVORD AND ALVORD

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD*
CARL C. DAVIS*
CHARLES T. KAPPLER
JOHN H. DOYLE*
GEORGE JOHN KETO*
MILTON C. GRACE*
JAMES C. MARTIN, JR.*

*NOT A MEMBER OF D.C. BAR
*ALSO ADMITTED IN NEW YORK
*ALSO ADMITTED IN OHIO
*ALSO ADMITTED IN MARYLAND

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D.C.

20006-2973

OF COUNSEL
JESS LARSON
JOHN L. INGOLDSBY
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

TELEX
440367 A AND A

Dec 4/1/87
Fee \$ 10.00

ICC Washington, D.C.

March 31, 1987

RECORDATION NO. 8884-B Filed & Recorded

APR 1 1987 4-30 PM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303(a) are two fully executed copies of an Affidavit of Transit Holding, Inc., a secondary document as defined in the Commission's Rules for the Recordation of Documents.

The enclosed document relates to a Lease of Railroad Equipment dated as of April 15, 1977 which was duly filed and recorded on July 15, 1977 and assigned Recordation Number 8884.

The name and address of the party executing the enclosed document is:

Transit Holding, Inc.
(formerly B.A. Lease Assets, Inc.)
555 California Street
San Francisco, California 94137

Also enclosed is a check in the amount of \$10 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

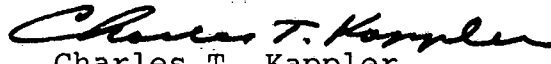
Charles T. Kappler
Charles T. Kappler

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
March 31, 1987
Page Two

A short summary of the enclosed secondary document to appear in the Commission's Index is:

Affidavit of Transit Holding, Inc. executed on
March 25, 1987.

Very truly yours,


Charles T. Kappler

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

4/2/87

OFFICE OF THE SECRETARY

Charles T. Kappler, Esq.
Alvord & Alvord
918 16th St. N.W.
Washington, D.C. 20425

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/1/87 at 4:30pm, and assigned re-recording number(s). 8884-B, 8999--I, 8999-J & 8885-A

Sincerely yours,

Noreta R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 8884-B Filed & Recorded

APR 1 1987 4-30 PM

AFFIDAVIT
OF TRANSIT HOLDING, INC.

INTERSTATE COMMERCE COMMISSION

The undersigned Roger Duncan, being duly sworn, deposes and states that he is a Vice President of Transit Holding, Inc. ("Lessor") and that:

(1) Lessor acquired and leased to NORTH AMERICAN CAR CORPORATION, a Delaware corporation ("Lessee") the railcars described in Annex A to this Affidavit (the "Railcars") under a Lease of Railroad Equipment dated as of April 15, 1977, recorded by the Interstate Commerce Commission (the "ICC") on July 15, 1977 (Recordation No. 8884) (the "Lease");

(2) Lessor and Lessee agreed to terminate the Lease and accordingly entered into a Stipulation (as modified) For Compromise of Controversy and Transfer of Rights Free and Clear of Liens and Interests, a true and correct copy of which is attached as Annex B to this Affidavit (the "Stipulation") pursuant to which (a) the Lease was rejected in the bankruptcy proceeding of NACC, as debtor, in the United States Bankruptcy Court, Central District of California, subject to entry of an order of the Bankruptcy Court approving the Stipulation, and (b) NACC retained the right to possess certain Railcars until termination of the existing subleases of such Railcars and to retain certain proceeds from the Railcars, as specified in Paragraphs 2(b) and 6 of the Stipulation; and

(3) On November 19, 1985 the Bankruptcy Court entered its order approving the Stipulation, a true and correct copy of which is attached as Annex C to this Affidavit.

FURTHER AFFIANT SAYETH NOT.

TRANSIT HOLDING, INC.

By


Roger Duncan
Vice President

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

On this 25th day of March 1987 before me personally appeared Roger Duncan to me personally known, who, being by me duly sworn says that he is a Vice President of TRANSIT HOLDING, INC., a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Nancy B. Gutierrez
Notary Public

My Commission Expires

June 2, 1989

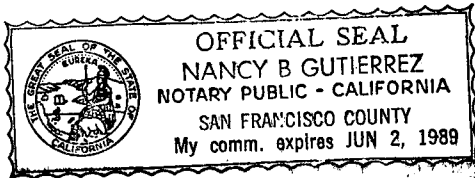


EXHIBIT A
TO
AFFIDAVIT
(TRANSIT HOLDING, INC.)

<u>Manufacturer</u>	<u>Description</u>	<u>Quantity</u>	<u>Serial Numbers (Inclusive)</u>	<u>Month of Delivery</u>	<u>Specifica- tion</u>
Union Tank Car Company	100-ton 17,000 Gallon Capacity Tank Cars	7	16850-16852, 16866, 16868, 16873, 16875	May-June 1977	NA-11
	100-ton 23,650 Gallon Capacity Tank Cars	85	76758-76842	May-June 1977	NA-13
	100-ton 25,000 Gallon Capacity Tank Cars	9	25252, 25255, 25256, 25258- 25263	June 1977	NA-16
North American Car Corporation	100-ton 34,000 Gallon Capacity Tank Cars	10	35389-35398	May-June 1977	2257
	5,750 Cu. Ft. Capacity Covered Hopper Cars	7	58701-58707	May-June 1977	HC-163
	4,000 Cu. Ft. Capacity P.D. Covered Hopper Cars	16	99861-99865, 99869-99874, 99895-99899	May-June 1977	BM4-26

ANNEX B
TO
AFFIDAVIT

1 Bernard Shapiro, A Professional Corporation
Lawrence Peitzman, Esq.
2 GENDEL, RASKOFF, SHAPIRO & QUITTNER
1801 Century Park East, 6th Floor
3 Los Angeles, California 90067
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4 Peter Leiter, Esq.
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7 Judith A. Gilbert, Esq.
8 BANK OF AMERICA LEGAL DEPARTMENT
555 South Flower Street, 9th Floor
9 Los Angeles, California 90071
(213) 228-4807

10 Attorneys for BameriLease, Inc., and Transit Holding, Inc.

11 Norman F. Nachman, Esq.
12 Gerald F. Munitz, Esq.
Lewis S. Rosenbloom, Esq.
13 NACHMAN, MUNITZ & SWEIG, LTD.
115 South LaSalle Street
14 Chicago, Illinois 60603
(312) 263-1480

15 Attorneys for North American Car Corporation

16 UNITED STATES BANKRUPTCY COURT

17 CENTRAL DISTRICT OF CALIFORNIA

18 In re) Bk. No. LA 84-23401-BR
19 NORTH AMERICAN CAR CORPORATION, a) Chapter 11
Delaware corporation; TEXAS RAILWAY) (Jointly Administered)
20 CAR CORPORATION, a Delaware corpora-) THIS DOCUMENT APPLIES TO
tion; THE BI-MODAL CORPORATION, a) ALL THE CASES:
21 Connecticut corporation; ROADRAIL) Case Nos.: LA-84-23401
TRANSPORTATION COMPANY, INC., a Del-) through LA-84-23417-B
22 aware corporation; TIGER FINANCIAL)
SERVICES, INC., a Delaware corpora-) STIPULATION (AS MODIFIED)
23 tion; TIGER MARINE INC., a Delaware) FOR COMPROMISE OF CONTRO-
corporation; SURFACE TRANSPORTATION) VERSY AND TRANSFER OF
24 INTERNATIONAL, INC., a Missouri cor-) RIGHTS FREE AND CLEAR OF
poration; SURFACE TRANSPORTATION OF) LIENS AND INTERESTS AMONG
25 OHIO, INC., an Ohio corporation;) NORTH AMERICAN CAR CORPORA-
S.T.I. OF LOUISIANA, INC., a Louisi-) TION, BAMERILEASE, INC.
26 ana corporation; S.T.I. OF SOUTH) AND TRANSIT HOLDING, INC.
DAKOTA, INC., a South Dakota corpor-)
27 ation; S.T.I. OF WISCONSIN, INC., a) Date: September 20, 1985
Wisconsin corporation; S.T.I.) Time: 9:30 a.m.
28 SPECIAL SERVICES, INC., a Missouri) Place: Courtroom A

1 corporation; AIR AND SURFACE TRANS-)
2 PORTATION INTERNATIONAL, INC., a)
3 Missouri corporation; S.T.I.X. CAR)
4 LEASING INCORPORATED, a Missouri)
5 corporation; S.T.I. OF KANSAS, INC.,)
6 a Kansas corporation; P&R RAIL CAR)
7 SERVICE CORP., a Maryland corpora-)
8 tion; and NORTH AMERICAN CAR)
9 (CANADA) LIMITED, an Ontario)
10 corporation,)

11 Debtors.)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

8 This Stipulation is made by and among North American
9 Car Corporation ("NACC"), debtor and debtor in possession in
10 one of the above-captioned chapter 11 cases, BameriLease, Inc.
11 ("BLI"), and Transit Holding, Inc., formerly known as B.A. Lease
12 Assets, Inc. ("THI").

13 The Stipulation is made with respect to the following
14 facts.
15

16 RECITALS

17 A. On December 5, 1984, NACC filed its voluntary
18 petition under chapter 11 of title 11 of the United States Code.
19 Since that date, it has, at all times, served as debtor in posses-
20 sion in the chapter 11 case.

21 B. Prior to the filing of the chapter 11 petition,
22 NACC had entered into lease agreements with THI and BLI covering
23 certain railcars (the "Cars"). The Lease with THI (the "THI
24 Lease"), then known as B.A. Lease Assets, Inc., was dated as of
25 April 15, 1977, and the Lease with BLI (the "BLI Lease") was dated
26 as of July 1, 1977.

27 C. After the filing of the chapter 11 petition, NACC
28 filed its "Application of Debtor in Possession for Authority to

1 Reject, As Lessee, Unexpired Leases for Railcars with BameriLease,
2 Inc., and B.A. Lease Assets, Inc." (the "Rejection Application"),
3 which was originally scheduled for hearing on May 7, 1985 and has
4 been continued from time to time and is now set for hearing on
5 September 20, 1985.

6 D. On or about April 26, 1985, BLI and THI filed and
7 served their "Memorandum in Opposition to Application of Debtor
8 in Possession for Authority to Reject, As Lessee, Unexpired Leases
9 for Railcars With BameriLease, Inc. and B.A. Lease Assets, Inc."
10 (the "Lessors' Opposition"), challenging NACC's right to reject
11 the leases on the terms set forth in the Rejection Application.

12 E. Copies of the BLI Lease and the THI Lease, without
13 certain amendments, were attached to the Rejection Application.
14 Copies of the Leases, with amendments, were attached to the
15 Lessors' Opposition.

16 F. Certain third parties have, from time to time,
17 asserted rights in the subleases covering the Cars (collectively,
18 the "Subleases" and individually a "Sublease") and in the revenues
19 generated under the Subleases.

20 G. NACC, BLI and THI now desire to resolve the dis-
21 putes over the Leases and Subleases and to that end have entered
22 into the following Stipulation.

23
24 STIPULATION

25 WHEREFORE, the parties agree as follows:

26 1. Effective upon entry of an order of the bankruptcy
27 court approving this Stipulation, NACC rejects the BLI Lease and
28 the THI Lease under 11 U.S.C. § 365, provided, however, that

1 notwithstanding the rejections, the following terms and conditions
2 shall apply.

3 2. NACC will return the Cars to BLI and THI pursuant
4 to the following provisions:

5 (a) With respect to each of the Cars that is not
6 subject to a Sublease of any kind, NACC or its fleet manager shall
7 immediately advise BLI or THI, as the case may be, of the location
8 of each such railcar. Thereafter, NACC and its fleet manager
9 shall as promptly as possible, on receipt of appropriate instruc-
10 tions from BLI or THI, return such railcars to BLI or THI in the
11 manner, at the time, to the location and by the routes specified
12 or approved by BLI or THI. NACC and its fleet manager shall at
13 all times cooperate in developing the most efficient and least
14 expensive route for transportation of the railcars to the location
15 specified by BLI or THI for return, and will assist in determining
16 points of interception for such railcars which are convenient to
17 the location specified for return and otherwise will attempt to
18 prevent any unnecessary routing of the railcars. In connection
19 with the foregoing, NACC and its fleet manager shall keep BLI and
20 THI fully apprised of the locations of the railcars and the
21 actions taken to deliver such railcars to BLI or THI and shall at
22 all times act in accordance with BLI's or THI's instructions and
23 take such additional actions as may be reasonably requested by BLI
24 or THI to facilitate the return of such railcars. The return
25 expenses shall be borne by the lessor to whom the railcar is being
26 returned.

27 (b) With respect to Cars that are subleased,
28 NACC will return any such Cars as soon as practicable after a

1 written request for such return is made by BLI or THI; provided,
2 however, that NACC shall not be required to take any action that
3 causes a breach of any sublease which would permit unilateral ter-
4 mination or modification of the sublease or give rise to a claim
5 for material damages. Upon receipt of such request NACC and its
6 fleet manager shall, to the extent permissible under such subleases,
7 utilize their best efforts to terminate or amend such sublease or
8 agreement with respect to such railcars or substitute other
9 railcars at the earliest date permitted under the terms of such
10 sublease or agreement and shall exercise and enforce for the
11 benefit of BLI and THI any provision in any such sublease requiring
12 third-party users, at the third party's risk and expense, to
13 deliver such railcars to a location designated by BLI or THI and
14 any other applicable return provisions. If any such railcar has
15 not been returned within 90 days after delivery of the request
16 for return, then BLI and THI may seek further relief from the
17 bankruptcy court. To the extent any railcar return expenses are
18 not borne by the third party user, then such expenses shall be
19 borne by the lessor to whom such railcar is being returned.

20 3. With respect to Cars possession of which is retained
21 by NACC pursuant to this Stipulation, NACC will, notwithstanding
22 rejection of the Leases, comply with the relevant provisions of
23 the BLI Lease or THI Lease, as the case may be, and, if more
24 stringent, of the applicable Sublease, concerning managing,
25 administering, operating, maintaining and insuring the Cars, the
26 direct expenses of which shall be for the account of BLI or THI,
27 as the case may be. However, NACC shall not make nor permit any
28 expenditures for maintenance, repairs or betterments in excess of

1 \$2,500.00 unless BLI or THI shall have failed to object to such
2 expenditure within five (5) business days after receipt of written
3 notification that such expenditure will be made. As soon as
4 practicable, but, in no event more than five (5) days after any
5 maintenance work, repair, or betterment is completed, NACC will
6 return the repaired or bettered Car to service under the applicable
7 Sublease.

8 4. Unless and until a Sublease terminates, NACC will
9 not, except as provided in paragraph 2(b), above, substitute other
10 railcars for any of the Cars possession of which it retains under
11 this Stipulation. Upon termination of a Sublease, NACC will, at
12 the expense of BLI or THI, as the case may be, return the Cars
13 covered by the terminated sublease at the place and in the manner
14 and condition specified in the relevant Lease. For purposes of
15 this Stipulation, unless BLI or THI shall not have consented to
16 renewal of the applicable Sublease: (1) any renewal or subsequent
17 renewal of an existing Sublease, even on modified terms, and any
18 new lease or sublease entered into with an existing sublessee in
19 substitution for or replacement of an existing Sublease shall be
20 deemed an extension of the existing Sublease, and (2) a lease or
21 sublease entered into with the existing sublessee within forty-five
22 (45) days after what would otherwise constitute termination of an
23 existing sublease for cars substantially similar to those covered
24 by the sublease shall also be deemed an extension of the existing
25 sublease.

26 5. NACC shall promptly provide BLI and THI with a list
27 of all subleases of Cars, a copy of each Sublease and a maintenance
28 history for each of the Cars.

1 6. Following entry of an order approving this Stipula-
2 tion, NACC or the Manager, as the case may be, shall only nominally
3 be lessor or sublessor with respect to Cars possession of which
4 NACC retains under this Stipulation, and BLI or THI, as the case
5 may be, shall be the beneficial owner of all rights with respect
6 to leases and subleases of such Cars with respect to that portion
7 of the leases and subleases that such Cars represent, and, not-
8 withstanding any prior court orders regarding the holdback of any
9 portion of such revenues, NACC will pass through, on a quarterly
10 basis, to BLI or THI, as the case may be, all amounts received
11 from and after December 5, 1984 in respect of any of the Cars
12 under applicable subleases ("Gross Sublease Revenues"), less only
13 the following amounts:

14 (a) All reasonable and necessary direct costs and
15 expenses that would be required under the BLI Lease or THI Lease
16 or are required under the applicable Sublease and are paid or
17 incurred in connection with the management of the Cars and preser-
18 vation of the revenues, including, but not limited to, any repair
19 and maintenance expenses, running repairs, mileage or other taxes,
20 empty movement charges, insurance, and management fees payable by
21 NACC to its fleet manager; provided, however, NACC may not deduct
22 any amount for management fees greater than the amount that would
23 be payable under its current arrangements with its fleet manager.
24 (For purposes of this Stipulation, "Net Sublease Revenues" shall
25 mean the amount obtained by deducting the items specified in this
26 sub-paragraph (a) from Gross Sublease Revenues.)

27 (b) the lesser of (i) 7.5% of Net Sublease
28 Revenues and (ii) the amount, if any, by which such Net Sublease

1 Revenues during the applicable quarter exceed the aggregate
2 Scheduled Rent, as hereinafter defined, for the applicable quarter
3 for all Cars possession of which NACC retains pursuant to this
4 Stipulation. For purposes of this Stipulation, "Scheduled Rent"
5 means, for each particular Car, a quarterly rental obligation
6 equal to 2.0378% of the Purchase Price, as defined in the BLI
7 Lease or THI Lease, as the case may be.

8 7. The monies to be passed through to BLI or THI
9 under paragraph 6, above, shall be deemed property held in trust
10 by NACC for BLI or THI, as the case may be, and shall not be
11 deemed property of the NACC bankruptcy estate.

12 8. The monies not passed through to BLI or THI under
13 paragraph 6 above shall be paid to NACC in full and complete
14 satisfaction of (a) any and all claims, including surcharge claims
15 under 11 U.S.C. § 506(c), that NACC as debtor and debtor in
16 possession or NACC's bankruptcy estate or any other entity may
17 have against BLI or THI for or on account of NACC's administration
18 and overhead, or the administration of NACC's bankruptcy case,
19 including professional fees incurred in connection with the
20 bankruptcy administration, and (b) any and all claims NACC as
21 debtor and debtor in possession or NACC's bankruptcy estate or any
22 other person may have against BLI or THI for or on account of any
23 property right or interest in the subleases that include the Cars
24 with respect to that portion of the subleases that such Cars
25 represent, or in amounts received in respect of those subleases
26 with respect to that portion of the subleases that such Cars
27 represent.

28 ///

1 9. All sums to be remitted to BLI or THI and all
2 claims, rights and interests of BLI and THI under this Stipulation
3 are and shall be transferred to BLI or THI, as the case may be,
4 free and clear of all liens, claims or interests of any and all
5 entities, including liens created by orders of the bankruptcy
6 court in NACC's chapter 11 case, and the court order approving
7 this Stipulation shall so provide. Nothing herein shall affect
8 any claim BLI or THI may have against NACC, arising from rejection
9 of its Lease with NACC or otherwise; provided, however, the sums
10 remitted to BLI and THI hereunder shall be in full satisfaction of
11 any claims BLI or THI may have based on NACC's use and occupancy
12 of the Cars from and after December 5, 1984.

13 10. NACC shall bring on for hearing an appropriate
14 proceeding for approval of this Stipulation as a compromise and as
15 a sale or use of property free and clear of liens, no later than
16 September 20, 1985. If this Stipulation is not approved or
17 disapproved at that hearing and BLI and THI do not consent to a
18 further continuance, this Stipulation is terminated and NACC shall
19 immediately, at that hearing, renew its motion for rejection of
20 the Leases, and the Rejection Application and the Lessors' Opposi-
21 tion shall then come on for hearing at that time or as promptly as
22 the Bankruptcy Court may thereafter allow.

23 11. BLI or THI may, at any time, assign any or all of
24 its respective rights under this Stipulation, and following such
25 assignment, the assignee shall have the full benefit of the rights
26 assigned.

27 12. This Stipulation shall not become effective unless
28 and until the Bankruptcy Court in which NACC's bankruptcy case is

1 pending enters its order approving this Stipulation and in connec-
2 tion with that order makes appropriate findings of fact or conclu-
3 sions of law, including the following:

4 (a) At the time NACC filed its chapter 11 petition,
5 NACC was the owner of all Subleases of Cars possession of which is
6 retained by NACC under this Stipulation, it has not since that
7 time sold or transferred any ownership rights in such subleases,
8 and no entity other than NACC has any legal or beneficial title to
9 such subleases.

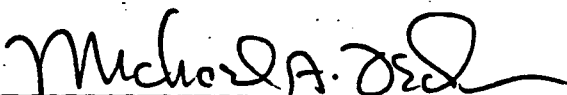
10 (b) NACC may require General Electric Railcar
11 Services Company, NACC's fleet manager, or any successor fleet
12 manager, to comply with all the terms and conditions of this
13 Stipulation, including, without limitation, the provisions
14 restricting substitution of railcars.

15 13. Nothing contained in this Stipulation above shall
16 be deemed an admission by any of the parties hereto in NACC's
17 bankruptcy case or in any other proceeding.

18 14. The parties will, from time to time, execute all
19 instruments, documents, or other writings necessary to effectuate
20 the purposes of this Stipulation.

21
22 Dated: 11/21/85

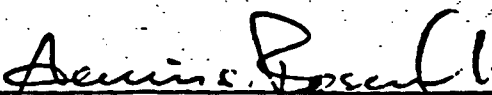
NORTH AMERICAN CAR CORPORATION
Debtor and Debtor In Possession

23
24 By 
25 Michael A. Feder
26 President
27

28 [SIGNATURES CONTINUED]

1 [SIGNATURES CONTINUED]

2
3 NACHMAN, MUNITZ & SWEIG, LTD.

4
5 By 
6 Lewis S. Rosenbloom
7 Attorneys for North American
8 Car Corporation

9 Dated:

BAMERILEASE, INC.


10
11 By 
12 Richard A. Rodgers
13 Vice President

14 Dated:

TRANSIT HOLDING, INC.

15
16 By 
17 Richard A. Rodgers
18 Vice President

19 GENDEL, RASKOFF, SHAPIRO & QUITTNER
20 and
21 BANK OF AMERICA LEGAL DEPARTMENT

22 By 
23 Peter Leiter
24 Attorneys for BameriLease, Inc. and
25 Transit Holding, Inc.
26
27
28

ANNEX C
TO
AFFIDAVIT

COPY

Bernard Shapiro, A Professional Corporation
Lawrence Peitzman, Esq.
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Attorneys for BameriLease, Inc., and Transit Holding, Inc.

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Gerald F. Munitz, Esq.
Lewis S. Rosenbloom, Esq.
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115 South LaSalle Street
Chicago, Illinois 60603
(312) 263-1480

Attorneys for North American Car Corporation

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re
NORTH AMERICAN CAR CORPORATION, a
Delaware corporation; TEXAS RAILWAY
CAR CORPORATION, a Delaware corpora-
tion; THE BI-MODAL CORPORATION, a
Connecticut corporation; ROADRAIL
TRANSPORTATION COMPANY, INC., a Del-
aware corporation; TIGER FINANCIAL
SERVICES, INC., a Delaware corpora-
tion; TIGER MARINE INC., a Delaware
corporation; SURFACE TRANSPORTATION
INTERNATIONAL, INC., a Missouri cor-
poration; SURFACE TRANSPORTATION OF
OHIO, INC., an Ohio corporation;
S.T.I. OF LOUISIANA, INC., a Louisi-
ana corporation; S.T.I. OF SOUTH
DAKOTA, INC., a South Dakota corpor-
ation; S.T.I. OF WISCONSIN, INC., a
Wisconsin corporation; S.T.I.
SPECIAL SERVICES, INC., a Missouri

ENTERED

NOV 19 1985

CENTRAL DISTRICT OF CALIFORNIA
BY

FILED

NOV 13 1985

CENTRAL DISTRICT OF CALIFORNIA
BY

Bk. No. LA 84-23401-BR
Chapter 11
(Jointly Administered)
THIS DOCUMENT APPLIES TO
ALL THE CASES:
Case Nos.: LA-84-23401
through LA-84-23417-B

ORDER APPROVING STIPULATION
WITH BAMERILEASE, INC. AND
TRANSIT HOLDING, INC.

Date: September 20, 1985
Time: 9:30 a.m.
Place: Courtroom A

(

1 corporation; AIR AND SURFACE TR. S-)
2 PORTATION INTERNATIONAL, INC., a)
3 Missouri corporation; S.T.I.X. CAR)
4 LEASING INCORPORATED, a Missouri)
5 corporation; S.T.I. OF KANSAS, INC.,)
6 a Kansas corporation; P&R RAIL CAR)
7 SERVICE CORP., a Maryland corpora-)
8 tion; and NORTH AMERICAN CAR)
9 (CANADA) LIMITED, an Ontario)
10 corporation,)

Debtors.)

On September 20, 1985 at 9:30 a.m., North American Car Corporation (the "Debtor"), debtor and debtor in possession in one of the above-captioned chapter 11 cases, brought on for hearing its "Application of North American Car Corporation for Approval of Stipulation with BameriLease, Inc. and Transit Holding, Inc. Com- promising Certain Controversies; Authorizing NACC to Reject Its Leases with BameriLease, Inc. and Transit Holding, Inc., And Authorizing NACC to Sell Certain of Its Rights Under Certain Sub- leases." That application is hereinafter referred to as the "Application," and the stipulation with which it deals is herein- after referred to as the "Stipulation."

The debtor was represented at the hearing on the Applica- tion by Gerald F. Munitz and Lewis S. Rosenbloom of Nachman, Munitz & Sweig, Ltd.; BameriLease, Inc. ("BLI") and Transit Holding, Inc. ("THI") were represented by Lawrence Peitzman of Gendel, Raskoff, Shapiro & Quittner and Peter Leiter and Judith A. Gilbert of the Bank of America Legal Department; the MCTA Creditors were repre- sented by J. Ronald Trost and Sally S. Neely of Sidley & Austin; General Electric Railcar Services Co. ("GERSCO") was represented by Bruce R. Zirinsky and Jacqueline Marcus of Weil, Gotshal &

1 Manges; and the Committee of Equipment Trust Certificate Holders
2 was represented by Philip Mindlin of Wachtell, Lipton, Rosen &
3 Katz. No other parties in interest made appearances specifically
4 in connection with the Application.

5 The Court has considered the Application and papers
6 filed in connection with it, statements of counsel at the hearing
7 on the Application and other papers on file in the Debtor's
8 chapter 11 case of which the Court may take judicial notice.

9 Based thereon, and on the findings of fact and conclusions of law
10 made concurrently with this Order, and good cause appearing it is
11 hereby

12 ORDERED:

13 1. The time for giving notice of the hearing on the
14 Application is shortened, nunc pro tunc, so as to permit the
15 Debtor to serve notice of the Application at the time and in the
16 manner in which it was served and to bring the Application on for
17 hearing on September 20, 1985 at 9:30 a.m.

18 2. The required notice of the hearing on the Application
19 is limited, nunc pro tunc, to counsel for the Official General
20 Unsecured Creditors' Committee and all creditors, equity security
21 holders and other parties in interest who filed with the Court
22 requests that all notices be mailed to them.

23 3. The Stipulation, as modified on the record of the
24 hearing held on September 20, 1985 in open court, is approved, and
25 the Debtor is authorized to enter into it. A copy of the Stipu-
26 lation as modified is attached hereto as Exhibit "A."

27 4. The monies to be passed through to BLI or THI under
28 paragraph 6 of the Stipulation shall be deemed property held in

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1 trust by the Debtor for BLI or THI, as the case may be, and shall
2 not be deemed property of the bankruptcy estate.

3 5. The monies not passed through to BLI or THI under
4 paragraph 6 of the Stipulation shall be paid to the Debtor in full
5 and complete satisfaction of (a) any and all claims, including
6 surcharge claims under 11 U.S.C. § 506(c), that the Debtor or its
7 bankruptcy estate or any other entity may have against BLI or THI
8 for or on account of Debtor's administration and overhead, or the
9 administration of the bankruptcy case, including professional fees
10 incurred in connection with the bankruptcy administration, and (b)
11 any and all claims the Debtor or its bankruptcy estate or any
12 other entity may have against BLI or THI for or on account of any
13 property right or interest in the subleases that include the Cars
14 with respect to that portion of the subleases that such Cars
15 represent or in amounts received in respect of those subleases
16 with respect to that portion of the subleases that such Cars
17 represent.

18 6. All sums to be remitted to BLI or THI and all
19 claims, rights and interests of NACC transferred to BLI and THI
20 under the Stipulation and this Order are and shall be transferred
21 to BLI or THI, as the case may be, free and clear of all liens,
22 claims or interests of any and all entities, including liens
23 created by orders of the bankruptcy court in the Debtor's chapter
24 11 case. Nothing herein shall affect any claim BLI or THI may
25 have against the Debtor, arising from rejection of its lease with
26 the Debtor or otherwise; provided, however, the sums remitted to
27 BLI or THI hereunder shall be in full satisfaction of any claims
28 BLI or THI may have based on the Debtor's use and occupancy of the

Cars from and after December 5, 1984. All liens removed from property of the Debtor's estate pursuant to this Order, including, without limitation, the liens asserted by the MCTA Creditors and liens created by Orders of the Bankruptcy Court in the Debtor's chapter 11 case, shall be transferred to the sums retained by the Debtor pursuant to paragraph 6 of the Stipulation with the same validity and priority as the liens had prior to the transfer. Notwithstanding the foregoing, the liens granted to GERSCO and QSR under prior orders of this Court to the extent that the liens secure payment of fees to GERSCO or reimbursement of GERSCO or QSR of expenses relating to or arising in connection with the BLI or THI cars shall not be removed unless and until GERSCO and QSR are paid and reimbursed for all such fees and expenses so incurred for the benefit of BLI or THI.

7. This Order and the Findings of Fact and Conclusions of Law made in connection with this Order relate solely to the Debtor's leases with BLI and THI, are not determinative with respect to any other transaction involving the Debtor, and no entity shall be entitled to rely upon or refer to this Order or the Findings of Fact and Conclusions of Law in connection with any action, proceeding, or matter whatsoever, by way of assertion of res judicata, collateral estoppel, waiver or otherwise.

Dated: 11-13-85



Bankruptcy Judge

Bernard Shapiro, A Professional Corporation
Lawrence Peitzman, Esq.

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Attorneys for North American Car Corporation

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re	)	Bk. No. LA 84-23401-BR
NORTH AMERICAN CAR CORPORATION, a	)	Chapter 11
Delaware corporation; TEXAS RAILWAY	)	(Jointly Administered)
CAR CORPORATION, a Delaware corpora-	)	THIS DOCUMENT APPLIES TO
tion; THE BI-MODAL CORPORATION, a	)	ALL THE CASES:
Connecticut corporation; ROADRAIL	)	Case Nos.: LA-84-23401
TRANSPORTATION COMPANY, INC., a Del-	)	through LA-84-23417-B
aware corporation; TIGER FINANCIAL)	
SERVICES, INC., a Delaware corpora-	)	STIPULATION (AS MODIFIED)
tion; TIGER MARINE INC., a Delaware	)	FOR COMPROMISE OF CONTRO-
corporation; SURFACE TRANSPORTATION	)	VERSY AND TRANSFER OF
INTERNATIONAL, INC., a Missouri cor-	)	RIGHTS FREE AND CLEAR OF
poration; SURFACE TRANSPORTATION OF	)	LIENS AND INTERESTS AMONG
OHIO, INC., an Ohio corporation;	)	NORTH AMERICAN CAR CORPORA-
S.T.I. OF LOUISIANA, INC., a Louisi-	)	TION, BAMERILEASE, INC.
ana corporation; S.T.I. OF SOUTH	)	AND TRANSIT HOLDING, INC.
DAKOTA, INC., a South Dakota corpor-)	
ation; S.T.I. OF WISCONSIN, INC., a	)	Date: September 20, 1985
Wisconsin corporation; S.T.I.	)	Time: 9:30 a.m.
SPECIAL SERVICES, INC., a Missouri	)	Place: Courtroom A

corporation; AIR AND RFACE TRANS-)
PORTATION INTERNATIONAL, INC., a)
Missouri corporation; S.T.I.X. CAR)
LEASING INCORPORATED, a Missouri)
corporation; S.T.I. OF KANSAS, INC.,)
a Kansas corporation; P&R RAIL CAR)
SERVICE CORP., a Maryland corpora-)
tion; and NORTH AMERICAN CAR)
(CANADA) LIMITED, an Ontario)
corporation,)

Debtors.)

This Stipulation is made by and among North American
Car Corporation ("NACC"), debtor and debtor in possession in
one of the above-captioned chapter 11 cases, BameriLease, Inc.
("BLI"), and Transit Holding, Inc., formerly known as B.A. Lease
Assets, Inc. ("THI").

The Stipulation is made with respect to the following
facts.

RECITALS

A. On December 5, 1984, NACC filed its voluntary
petition under chapter 11 of title 11 of the United States Code.
Since that date, it has, at all times, served as debtor in posses-
sion in the chapter 11 case.

B. Prior to the filing of the chapter 11 petition,
NACC had entered into lease agreements with THI and BLI covering
certain railcars (the "Cars"). The Lease with THI (the "THI
Lease"), then known as B.A. Lease Assets, Inc., was dated as of
April 15, 1977, and the Lease with BLI (the "BLI Lease") was dated
as of July 1, 1977.

C. After the filing of the chapter 11 petition, NACC
filed its "Application of Debtor in Possession for Authority to

1 Reject, As Lessee, Unexpired Leases for Railcars with BameriLease,
2 Inc., and B.A. Lease Assets, Inc." (the "Rejection Application"),
3 which was originally scheduled for hearing on May 7, 1985 and has
4 been continued from time to time and is now set for hearing on
5 September 20, 1985.

6 D. On or about April 26, 1985, BLI and THI filed and
7 served their "Memorandum in Opposition to Application of Debtor
8 in Possession for Authority to Reject, As Lessee, Unexpired Leases
9 for Railcars With BameriLease, Inc. and B.A. Lease Assets, Inc."
10 (the "Lessors' Opposition"), challenging NACC's right to reject
11 the leases on the terms set forth in the Rejection Application.

12 E. Copies of the BLI Lease and the THI Lease, without
13 certain amendments, were attached to the Rejection Application.
14 Copies of the Leases, with amendments, were attached to the
15 Lessors' Opposition.

16 F. Certain third parties have, from time to time,
17 asserted rights in the subleases covering the Cars (collectively,
18 the "Subleases" and individually a "Sublease") and in the revenues
19 generated under the Subleases.

20 G. NACC, BLI and THI now desire to resolve the dis-
21 putes over the Leases and Subleases and to that end have entered
22 into the following Stipulation.

23
24 STIPULATION

25 WHEREFORE, the parties agree as follows:

26 1. Effective upon entry of an order of the bankruptcy
27 court approving this Stipulation, NACC rejects the BLI Lease and
28 the THI Lease under 11 U.S.C. § 365, provided, however, that

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1 notwithstanding the rejections, the following terms and conditions
2 shall apply.

3 2. NACC will return the Cars to BLI and THI pursuant
4 to the following provisions:

5 (a) With respect to each of the Cars that is not
6 subject to a Sublease of any kind, NACC or its fleet manager shall
7 immediately advise BLI or THI, as the case may be, of the location
8 of each such railcar. Thereafter, NACC and its fleet manager
9 shall as promptly as possible, on receipt of appropriate instruc-
10 tions from BLI or THI, return such railcars to BLI or THI in the
11 manner, at the time, to the location and by the routes specified
12 or approved by BLI or THI. NACC and its fleet manager shall at
13 all times cooperate in developing the most efficient and least
14 expensive route for transportation of the railcars to the location
15 specified by BLI or THI for return, and will assist in determining
16 points of interception for such railcars which are convenient to
17 the location specified for return and otherwise will attempt to
18 prevent any unnecessary routing of the railcars. In connection
19 with the foregoing, NACC and its fleet manager shall keep BLI and
20 THI fully apprised of the locations of the railcars and the
21 actions taken to deliver such railcars to BLI or THI and shall at
22 all times act in accordance with BLI's or THI's instructions and
23 take such additional actions as may be reasonably requested by BLI
24 or THI to facilitate the return of such railcars. The return
25 expenses shall be borne by the lessor to whom the railcar is being
26 returned.

27 (b) With respect to Cars that are subleased,
28 NACC will return any such Cars as soon as practicable after a

1 written request for such return is made by BLI or THI; provided,
2 however, that NACC shall not be required to take any action that
3 causes a breach of any sublease which would permit unilateral ter-
4 mination or modification of the sublease or give rise to a claim
5 for material damages. Upon receipt of such request NACC and its
6 fleet manager shall, to the extent permissible under such subleases,
7 utilize their best efforts to terminate or amend such sublease or
8 agreement with respect to such railcars or substitute other
9 railcars at the earliest date permitted under the terms of such
10 sublease or agreement and shall exercise and enforce for the
11 benefit of BLI and THI any provision in any such sublease requiring
12 third-party users, at the third party's risk and expense, to
13 deliver such railcars to a location designated by BLI or THI and
14 any other applicable return provisions. If any such railcar has
15 not been returned within 90 days after delivery of the request
16 for return, then BLI and THI may seek further relief from the
17 bankruptcy court. To the extent any railcar return expenses are
18 not borne by the third party user, then such expenses shall be
19 borne by the lessor to whom such railcar is being returned.

20 3. With respect to Cars possession of which is retained
21 by NACC pursuant to this Stipulation, NACC will, notwithstanding
22 rejection of the Leases, comply with the relevant provisions of
23 the BLI Lease or THI Lease, as the case may be, and, if more
24 stringent, of the applicable Sublease, concerning managing,
25 administering, operating, maintaining and insuring the Cars, the
26 direct expenses of which shall be for the account of BLI or THI,
27 as the case may be. However, NACC shall not make nor permit any
28 expenditures for maintenance, repairs or betterments in excess of

1 \$2,500.00 unless BLI or THI shall have failed to object to such
2 expenditure within five (5) business days after receipt of written
3 notification that such expenditure will be made. As soon as
4 practicable, but, in no event more than five (5) days after any
5 maintenance work, repair, or betterment is completed, NACC will
6 return the repaired or bettered Car to service under the applicable
7 Sublease.

8 4. Unless and until a Sublease terminates, NACC will
9 not, except as provided in paragraph 2(b), above, substitute other
10 railcars for any of the Cars possession of which it retains under
11 this Stipulation. Upon termination of a Sublease, NACC will, at
12 the expense of BLI or THI, as the case may be, return the Cars
13 covered by the terminated sublease at the place and in the manner
14 and condition specified in the relevant Lease. For purposes of
15 this Stipulation, unless BLI or THI shall not have consented to
16 renewal of the applicable Sublease: (1) any renewal or subsequent
17 renewal of an existing Sublease, even on modified terms, and any
18 new lease or sublease entered into with an existing sublessee in
19 substitution for or replacement of an existing Sublease shall be
20 deemed an extension of the existing Sublease, and (2) a lease or
21 sublease entered into with the existing sublessee within forty-five
22 (45) days after what would otherwise constitute termination of an
23 existing sublease for cars substantially similar to those covered
24 by the sublease shall also be deemed an extension of the existing
25 sublease.

26 5. NACC shall promptly provide BLI and THI with a list
27 of all subleases of Cars, a copy of each Sublease and a maintenance
28 history for each of the Cars.

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6. Following entry of an order approving this Stipulation, NACC or the Manager, as the case may be, shall only nominally be lessor or sublessor with respect to Cars possession of which NACC retains under this Stipulation, and BLI or THI, as the case may be, shall be the beneficial owner of all rights with respect to leases and subleases of such Cars with respect to that portion of the leases and subleases that such Cars represent, and, notwithstanding any prior court orders regarding the holdback of any portion of such revenues, NACC will pass through, on a quarterly basis, to BLI or THI, as the case may be, all amounts received from and after December 5, 1984 in respect of any of the Cars under applicable subleases ("Gross Sublease Revenues"), less only the following amounts:

(a) All reasonable and necessary direct costs and expenses that would be required under the BLI Lease or THI Lease or are required under the applicable Sublease and are paid or incurred in connection with the management of the Cars and preservation of the revenues, including, but not limited to, any repair and maintenance expenses, running repairs, mileage or other taxes, empty movement charges, insurance, and management fees payable by NACC to its fleet manager; provided, however, NACC may not deduct any amount for management fees greater than the amount that would be payable under its current arrangements with its fleet manager. (For purposes of this Stipulation, "Net Sublease Revenues" shall mean the amount obtained by deducting the items specified in this sub-paragraph (a) from Gross Sublease Revenues.)

(b) the lesser of (i) 7.5% of Net Sublease Revenues and (ii) the amount, if any, by which such Net Sublease

Revenues during the applicable quarter exceed the aggregate Scheduled Rent, as hereinafter defined, for the applicable quarter for all Cars possession of which NACC retains pursuant to this Stipulation. For purposes of this Stipulation, "Scheduled Rent" means, for each particular Car, a quarterly rental obligation equal to 2.0378% of the Purchase Price, as defined in the BLI Lease or THI Lease, as the case may be.

7. The monies to be passed through to BLI or THI under paragraph 6, above, shall be deemed property held in trust by NACC for BLI or THI, as the case may be, and shall not be deemed property of the NACC bankruptcy estate.

8. The monies not passed through to BLI or THI under paragraph 6 above shall be paid to NACC in full and complete satisfaction of (a) any and all claims, including surcharge claims under 11 U.S.C. § 506(c), that NACC as debtor and debtor in possession or NACC's bankruptcy estate or any other entity may have against BLI or THI for or on account of NACC's administration and overhead, or the administration of NACC's bankruptcy case, including professional fees incurred in connection with the bankruptcy administration, and (b) any and all claims NACC as debtor and debtor in possession or NACC's bankruptcy estate or any other person may have against BLI or THI for or on account of any property right or interest in the subleases that include the Cars with respect to that portion of the subleases that such Cars represent, or in amounts received in respect of those subleases with respect to that portion of the subleases that such Cars represent.

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9. All sums to be remitted to BLI or THI and all claims, rights and interests of BLI and THI under this Stipulation are and shall be transferred to BLI or THI, as the case may be, free and clear of all liens, claims or interests of any and all entities, including liens created by orders of the bankruptcy court in NACC's chapter 11 case, and the court order approving this Stipulation shall so provide. Nothing herein shall affect any claim BLI or THI may have against NACC, arising from rejection of its Lease with NACC or otherwise; provided, however, the sums remitted to BLI and THI hereunder shall be in full satisfaction of any claims BLI or THI may have based on NACC's use and occupancy of the Cars from and after December 5, 1984.

10. NACC shall bring on for hearing an appropriate proceeding for approval of this Stipulation as a compromise and as a sale or use of property free and clear of liens, no later than September 20, 1985. If this Stipulation is not approved or disapproved at that hearing and BLI and THI do not consent to a further continuance, this Stipulation is terminated and NACC shall immediately, at that hearing, renew its motion for rejection of the Leases, and the Rejection Application and the Lessors' Opposition shall then come on for hearing at that time or as promptly as the Bankruptcy Court may thereafter allow.

11. BLI or THI may, at any time, assign any or all of its respective rights under this Stipulation, and following such assignment, the assignee shall have the full benefit of the rights assigned.

12. This Stipulation shall not become effective unless and until the Bankruptcy Court in which NACC's bankruptcy case is

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pending enters its order approving this Stipulation and in connection with that order makes appropriate findings of fact or conclusions of law, including the following:

(a) At the time NACC filed its chapter 11 petition, NACC was the owner of all Subleases of Cars possession of which is retained by NACC under this Stipulation, it has not since that time sold or transferred any ownership rights in such subleases, and no entity other than NACC has any legal or beneficial title to such subleases.

(b) NACC may require General Electric Railcar Services Company, NACC's fleet manager, or any successor fleet manager, to comply with all the terms and conditions of this Stipulation, including, without limitation, the provisions restricting substitution of railcars.

13. Nothing contained in this Stipulation above shall be deemed an admission by any of the parties hereto in NACC's bankruptcy case or in any other proceeding.

14. The parties will, from time to time, execute all instruments, documents, or other writings necessary to effectuate the purposes of this Stipulation.

Dated:

NORTH AMERICAN CAR CORPORATION
Debtor and Debtor In Possession

By

Michael A. Feder
President

[SIGNATURES CONTINUED]

1 [SIGNATURES CONTINUED]

2
3 NACHMAN, MUNITZ & SWEIG, LTD.
4

5 By _____
6 Lewis S. Rosenbloom
7 Attorneys for North American
8 Car Corporation

9 Dated: BameriLease, INC.

10
11 By _____
12 Richard A. Rodgers
13 Vice President

14 Dated: TRANSIT HOLDING, INC.

15
16 By _____
17 Richard A. Rodgers
18 Vice President

19 GENDEL, RASKOFF, SHAPIRO & QUITTNER
20 and
21 BANK OF AMERICA LEGAL DEPARTMENT

22 By _____
23 Peter Leiter
24 Attorneys for BameriLease, Inc. and
25 Transit Holding, Inc.

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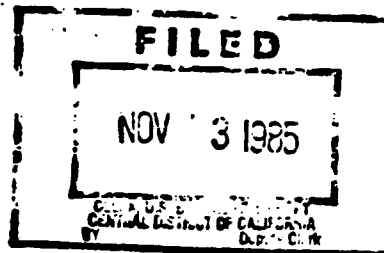
Attorneys for BameriLease, Inc., and Transit Holding, Inc.

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Attorneys for North American Car Corporation

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re	)	Bk. No. LA 84-23401-BR
NORTH AMERICAN CAR CORPORATION, a	)	Chapter 11
Delaware corporation; TEXAS RAILWAY	)	(Jointly Administered)
CAR CORPORATION, a Delaware corpora-	)	THIS DOCUMENT APPLIES TO
tion; THE BI-MODAL CORPORATION, a	)	ALL THE CASES:
Connecticut corporation; ROADRAIL	)	Case Nos.: LA-84-23401
TRANSPORTATION COMPANY, INC., a Del-	)	through LA-84-23417-B
aware corporation; TIGER FINANCIAL)	
SERVICES, INC., a Delaware corpora-	)	FINDINGS OF FACT AND CON-
tion; TIGER MARINE INC., a Delaware	)	CLUSIONS OF LAW RE ORDER
corporation; SURFACE TRANSPORTATION	)	APPROVING STIPULATION WITH
INTERNATIONAL, INC., a Missouri cor-	)	BAMERILEASE, INC. AND
poration; SURFACE TRANSPORTATION OF	)	TRANSIT HOLDING, INC.
OHIO, INC., an Ohio corporation;)	
S.T.I. OF LOUISIANA, INC., a Louisi-	)	Date: September 20, 1985
ana corporation; S.T.I. OF SOUTH	)	Time: 9:30 a.m.
DAKOTA, INC., a South Dakota corpor-	)	Place: Courtroom A
ation; S.T.I. OF WISCONSIN, INC., a)	
Wisconsin corporation; S.T.I.)	
SPECIAL SERVICES, INC., a Missouri)	



()
1 corporation; AIR AND SURFACE TRANS-)
PORTATION INTERNATIONAL, INC., a)
2 Missouri corporation; S.T.I.X. CAR)
LEASING INCORPORATED, a Missouri)
3 corporation; S.T.I. OF KANSAS, INC.,)
a Kansas corporation; P&R RAIL CAR)
4 SERVICE CORP., a Maryland corpora-)
tion; and NORTH AMERICAN CAR)
5 (CANADA) LIMITED, an Ontario)
corporation,)

6)
Debtors.)
7)
8)
9)

On September 20, 1985 at 9:30 a.m., North American Car Corporation (the "Debtor"), debtor and debtor in possession in one of the above-captioned chapter 11 cases, brought on for hearing its "Application of North American Car Corporation for Approval of Stipulation with BameriLease, Inc. and Transit Holding, Inc. Compromising Certain Controversies; Authorizing NACC to Reject Its Leases with BameriLease, Inc. and Transit Holding, Inc.; And Authorizing NACC to Sell Certain of Its Rights Under Certain Subleases." That application is hereinafter referred to as the "Application," and the stipulation with which it deals is hereinafter referred to as the "Stipulation."

The debtor was represented at the hearing on the Application by Gerald F. Munitz and Lewis S. Rosenbloom of Nachman, Munitz & Sweig, Ltd.; BameriLease, Inc. ("BLI") and Transit Holding, Inc. ("THI") were represented by Lawrence Peitzman of Gendel, Raskoff, Shapiro & Quittner and Peter Leiter and Judith A. Gilbert of the Bank of America Legal Department; the MCTA Creditors were represented by J. Ronald Trost and Sally S. Neely of Sidley & Austin; General Electric Railcar Services Co. ("GERSCO") was represented by Bruce R. Zirinsky and Jacqueline Marcus of Weil,

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1 Gotshal & Manges; and the Committee of Equipment Trust Certi-
2 ficate Holders was represented by Philip Mindlin of Wachtell,
3 Lipton, Rosen & Katz. No other parties in interest made appear-
4 ances specifically in connection with the Application.

5 The Court has considered the Application and papers
6 filed in connection with it, statements of counsel at the hearing
7 on the Application and other papers on file in the Debtor's
8 chapter 11 case of which the Court may take judicial notice.
9 Based thereon, the Court makes the following findings of fact and
10 conclusions of law.

11
12 FINDINGS OF FACT

13 1. Notice of the Application and of the hearing
14 thereon was sent to counsel for the Official General Unsecured
15 Creditors' Committee and all creditors, equity security holders
16 and other parties in interest who filed with the Court requests
17 that all notices be mailed to them.

18 2. The Debtor's estate has over 1600 creditors and
19 a mailing of notice to all creditors would be unduly burdensome
20 and expensive.

21 3. Notice of the Application and of the hearing
22 thereon was mailed to the entities described above six days before
23 the hearing.

24 4. There was a substantial likelihood that BLI and THI
25 would not agree to enter into the Stipulation if the Stipulation
26 was not approved at the hearing held before this Court on September
27 20, 1985.

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5. The Stipulation relates to a number of legal issues that have been raised before this Court at numerous hearings and in various papers filed by various parties.

6. The Debtor will receive fair and substantial consideration from BLI and THI under the Stipulation in exchange for, among other things, settling with respect to BLI and THI certain of the legal issues described above and for selling beneficial ownership of a portion of certain leases or subleases to BLI and THI.

7. At the time the Debtor filed its chapter 11 petition the Debtor was the owner of all subleases of railcars leased to the Debtor by BLI or THI and possession of which is retained by the Debtor under the Stipulation, the Debtor has not since that time sold or transferred any ownership rights in such subleases, and no entity other than the Debtor has any legal or beneficial title to such subleases.

8. The Debtor may require GERSCO, the Debtor's fleet manager, or any successor fleet manager to comply with all the terms and conditions of the Stipulation, including, without limitation, the provisions restricting substitution of railcars.

9. The Debtor and BLI and THI agreed, in open court, at the hearing on the Application, to certain modifications of the Stipulation requested by other parties in interest in the chapter 11 case. Those changes were:

a. The first sentence of paragraph 2(b) of the Stipulation was amended to read as follows: "With respect to Cars that are subleased, NACC will return any such Cars as soon as practicable after a written request for such return is made by BLI

or THI; provided, however, that NACC shall not be required to take any action that causes a breach of any sublease which would permit unilateral termination or modification of the sublease or give rise to a claim for material damages."

b. In paragraph 4 of the Stipulation, the words "six (6) months" at lines 18-19 of page 6 was deleted and the words "forty-five (45) days" were inserted in their place.

c. In paragraph 6 of the Stipulation, after the words "leases and subleases of such Cars" on line 4 of page 7, the following words were inserted: "with respect to that portion of the leases and subleases that such Cars represent."

d. In paragraph 8 of the Stipulation, after the words "the subleases that include the Cars" on line 21 of page 8, the following words were inserted: "with respect to that portion of the subleases that such Cars represent."

e. In paragraph 8 of the Stipulation, after the words "those subleases" on line 22 of page 8, the following words were inserted: "with respect to that portion of the subleases that such Cars represent."

10. In addition to the changes described above, in paragraph 6 of the Stipulation, after the word "mileage" on line 19 of page 7, the words "or other" were inserted.

11. All liens, claims or interests with respect to the sums remitted and the rights transferred to BLI or THI under the Stipulation are to be transferred to sums retained by the Debtor under paragraph 6 of the Stipulation and, except as specifically provided in the order approving the Stipulation, the sums remitted

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1 and the rights transferred to BLI or THI under the Stipulation are
2 to be transferred free and clear of all liens, claims or interest.

3 To the extent any of the foregoing findings of fact are
4 actually conclusions of law, they shall be deemed conclusions of
5 law.

6
7 CONCLUSIONS OF LAW

8 A. Cause exists for the shortening of time and the
9 limitation of the scope of notice with respect to the Application
10 and the hearing thereon, and the notice given by the Debtor was
11 appropriate in the circumstances of this case.

12 B. Rejection of its leases with BLI and THI is an
13 exercise of reasonable business judgment by the Debtor.

14 C. It is in the best interest of the Debtor and the
15 estate that the Debtor enter into the Stipulation, as modified,
16 and that it be authorized by this Court to do so.

17 To the extent that any of the foregoing conclusions
18 of law are actually findings of fact, they shall be deemed
19 findings of fact.

20
21 Dated: 11-13-85

22
23 
24 Bankruptcy Judge